



STAFF REPORT INFORMATION ONLY

FAIR WAGE OFFICE - 2009 ANNUAL REPORT

Date:	May 28, 2010
To:	Government Management Committee
From:	Manager, Fair Wage Office
Wards:	All
Reference Number:	TBD

SUMMARY

This report provides an overview of the activities of the Fair Wage Office for 2009.

FINANCIAL IMPACT

There are no financial implications from this report.

EQUITY IMPACT STATEMENT

The implementation of the Fair Wage Policy advances the City's commitment towards access, equity, and human rights by ensuring that workers on City contracts are paid a "fair wage" and are not subject to harassment or discrimination. Through the implementation of this policy, workers become aware of their rights and this is particularly important to newly arrived immigrants and other vulnerable workers. The Fair Wage Office will increase awareness in the immigrant community by providing educational material in various languages about the City's Fair Wage Policy and complaint process. Through these efforts, workers and employers will be better informed of their rights and responsibilities.

DECISION HISTORY

At its meeting on June 24, 25 and 26, 2003, City Council approved Clause No. 2 contained in report No. 5 of the Administration Committee, clarifying the role of the Fair Wage Office and its responsibility for ensuring compliance with the Fair Wage Policy.

Municipal Code, Fair Wage Policy Chapter 67, Schedule A & B requires the Manager, Fair Wage Office to report annually to the Government Management Committee concerning the Fair Wage Policy administration and application including enforcement activities.

ISSUE BACKGROUND

The Fair Wage Policy is designed to ensure that contractors awarded contracts with the City of Toronto pay their workers “fair wages” for work performed and to ensure that workers are not exploited or discriminated against. The Fair Wage Office is responsible for ensuring that a fair, open and transparent process is followed in the overall application and operation of the Fair Wage Policy and Labour Trade Contractual Obligations in the construction industry.

The intent of the Fair Wage Policy can be summarized as follows:

- (1) To produce stable labour relations with minimal disruption.
- (2) To compromise between the wage differentials of organized and unorganized labour.
- (3) To create a level playing field in competition for City Work.
- (4) To protect the public and workers from exploitation by unscrupulous contractors.
- (5) To enhance the reputation of the City for ethical and fair business dealings.

The Fair Wage Office investigates complaints and takes enforcement action when it is determined that contractors fail to pay their workers the prescribed hourly wage rate, vacation and holiday pay and any applicable amount for fringe benefits shown in the current Fair Wage Schedules.

The Fair Wage Office provides wage protection for workers engaged on City contracts. The competition for these contracts is often fierce and contractors and sub-contractors might be enticed to cut contract cost simply by cutting employee wages. In this environment, it is important to ensure that workers are fairly treated and compensated without disrupting the orderly function of the City’s procurement process.

COMMENTS

This report outlines the Fair Wage Office activities for 2009 and provides information on contractors who had at least one incident of non-compliance during the year, with a focus on the following areas:

- Procurement workload indicators (the number of contracts and firms reviewed);
- The number of established investigations conducted;
- Type of violations found;

- The amount of wages found to be unlawfully withheld from workers and the amount of unpaid wages recovered on behalf of workers; and
- The amount of administration fee penalties transferred to the City Treasurer as a result of the Fair Wage Office efforts.

2009 Highlights

Looking at 2009 activities, the Fair Wage Office concentrated on industries that have a history of non-compliance as a result of complaints from construction workers. Complaints are generally received by the Office from workers, competing firms, unions and various labour associations. Depending on the nature of the complaint, an initial investigation is commenced to determine if the complaints have merit. An investigation can take the form of communication with the principals and/or workers over the telephone, a work site inspection and/or an unannounced head office visit to inspect payroll records. The origin of the complaint is kept confidential.

Payroll investigations identify workers, their job classification, hours worked, wage rates and benefits paid against what is required under the Fair Wage Policy. The payroll compliance review reveals whether specific workers have been compensated in accordance with the Policy. If a firm has not been paying its workers the proper wages, the Manager, Fair Wage Office deems the firm to be in non-compliance of the Fair Wage Policy and instructs the firm to pay its workers the appropriate back wages to make up the proper wage and benefit rate. The Fair Wage Office also has the discretion to charge an administrative fee of 15 %.

In 2009, The Fair Wage Office participated in a unique youth initiative in the Weston Mount Dennis priority neighbourhood as part of The City Strong Neighbourhoods Strategy. The objective of this initiative was to work with the City's procurement process and engage the participation of the City's certified labour trades in training local youth in various aspects of construction at 1652 Keele Street. This initiative was an opportunity for youth participants to develop skills and pursue viable career paths in the construction trades. A combination of on job training and related classroom training provided a successful project, local youth's sense of accomplishment, community belonging, self esteem and a potential resource to make sound career choices.

Other highlights in 2009 include the Fair Wage Office investigating allegations of violations of the Fair Wage Policy by Construction Contractors, Waste Removal Companies, Winter Maintenance Firms, Earth Equipment Operators and Cleaning Services.

Even with the labour disruption from June 22, 2009 to July 31, 2009, the Fair Wage Office produced significant and record case management results given the limited staffing levels and resources of the Office.

Table 1 illustrates the workload indicators and policy enforcement activities for 2009. It should be noted that the degree and complexity of each case can vary significantly

between Tenders, Request for Proposals (RFP's), Request for Quotations (RFQ's), Departmental Purchase Orders (DPO's), and Sole-Source requests reviewed and investigations undertaken.

Table 1 - 2009 Fair Wage Office Activity Limited to City of Toronto Contracts

	2007	2008	2009
Number of Firms Reviewed	3,026	3,005	2,660
Number of Firms Approved	2,854	2,699	2,556
Number of Tenders/RFQs/RFPs/DPOs/Sole Source Requests	2,263	2,234	2,537
Number of Site Visits Conducted	74	174	141
Total Investigations Conducted	74	56	70
Fair Wage Policy Investigations	44	31	45
Labour Trade Contractual Obligations Investigations(LTCO)	30	25	25
Value of Violations (Fair Wage Policy & LTCO)	\$231,413.04	\$233,509.80	\$345,101.30
Number of Contractors Cited for First Violation	27	17	25
Fair Wage Policy Enforcement			
Fair Wage Policy Investigations	44	31	45
Value of Fair Wage Violations	\$136,806.96	\$190,120.61	\$283,275.41
Number of Workers Receiving Back Wages	89	294	295
Value (\$) Collected for Fair Wage Policy Administration Fee	\$19,320.10	\$27,567.82	\$37,580.64
Labour Trade Contractual Obligations Enforcement			
Number of Grievances Investigated	30	25	25
Value of Violations	\$94,606.08	\$43,389.19	\$61,825.89
Other Revenues			
Exhibition Place – payment received for FWO Service	\$1,914.64	\$1,914.64	\$1,914.64

Fair Wage Violations

Much of the work undertaken by the Fair Wage Office in investigating contractors' compliance is directed at corroborating payroll information. This is achieved through verifying wage rates, vacation pay, hours of work and workers job classification.

A significant percentage of complainants were interviewed in 2009 and alleged contravention by contractors was noted. Written notifications were sent to contractors advising them of their non-compliance of the Fair Wage Policy and by-law requirements sufficient to disqualify contractors who habitually violate the Policy provisions over a three year period.

In 2009 the Fair Wage Office conducted one hundred and forty one (141) site visits and seventy (70) investigations in which forty five (45) pertained to the Fair Wage Policy. Of the forty five (45) Fair Wage Policy investigations, twenty five (25) firms were cited for their first violation as identified in Appendix A of this report. In the event that any of the 25 firms listed are found to be in non-compliance with the provisions of the Fair Wage Policy in two separate instances over a period of three years, the Manager of the Fair Wage Office must report to Council on disqualification from City contracts for a two year period.

Penalties were assessed and back wages and benefits owing from non-compliant contractors totalled \$283,275.41. These funds were collected and distributed to a total of two hundred and ninety five (295) workers. Also, the Fair Wage Office collected a total of \$37,580.64 in administration fees made payable to the City Treasurer, and deposited in a timely manner.

As part of its enforcement responsibilities, the Fair Wage Office continues to increase its efforts to educate contractors, workers, City staff, as well as, other external organizations about the Fair Wage Policy.

The Fair Wage Office Web page (<http://www.toronto.ca/fairwage/>) and telephone hotline (416) 392-FAIR receives inquiries from employers, employees and other members of the public concerning a variety of employment related issues. Common topics include questions about unpaid wages, required fair wage rates, classification of work involved and labour trade requirements. The Fair Wage website has had traffic activities of 52,096 hits in 2009. The hotline is also a source where workers are able to lodge complaints regarding employers that have failed to pay workers the prescribed fair wage rate.

The Fair Wage Office is committed to ongoing communication. The establishment of a web page has been effective in its objective to inform employers and workers of the major policy changes, and encourage the public to access the web site and call the hotline to obtain further information and advice. Through these efforts, workers and employers are better informed of their rights and responsibilities. Better and more readily available information has generally resulted in behavioural changes which improve compliance with the Fair Wage Policy.

Labour Trade Violations

The Fair Wage Office provides support to Employee and Labour Relations staff with respect to grievances filed against the City by a labour trade union for alleged violations

of the City's Labour Trade Contractual Obligations in the construction industry and/or the application of the collective agreements.

Where firms have allegedly violated the City's Labour Trade Contractual Obligations in the construction industry, the Fair Wage Office has continued to take an active role in facilitating many of the settlements achieved. The Fair Wage Office holds exploratory and discovery meetings in order to resolve alleged Labour Trade violations with various affected contractors. These discussions may occur before or after a grievance is filed against the City and/or before the grievance is referred to the Ontario Labour Relations Board. The Fair Wage Office, together with Employee & Labour Relations and Legal staff regularly engage in informal or formal dispute resolution aimed at facilitating settlements. This frequently takes the form of addressing the relative strengths and weaknesses of the factual and legal positions of the parties, and giving the parties the opportunity for open and frank discussions. These efforts have directly resulted in twelve (12) Labour Trade settlements in 2009, as well as faster case processing, thus avoiding costly grievance hearings at the Ontario Labour Relations Board. In 2009 there was a total value of \$61,825.89 in negotiated grievances filed against the City of Toronto. Appendix A of this report identifies the firms involved in Labour Trade non-compliant cases.

Work Plan 2010

The Fair Wage Office has observed the following trends and will maintain diligent oversight of potential violations of the Fair Wage Policy.

- Recent dramatic growth of Temporary/Personnel Labour Agencies has increased attention to the industry's exploitation of vulnerable workers. Several firms have been cited for failing to comply with the Fair Wage Policy when employing workers through these means.
- Classification of workers as independent contractors/employees by employers. These hiring practices pose a significant risk involving mistaken or wrongful categorization of workers as independent contractors. As individuals services are intended to be provided on an independent contractor basis, this must be a true independent contractor relationship in order to withstand scrutiny in any investigation.
- Newly arrived immigrants are among the workers who are most vulnerable to exploitation by dishonest contractors. Many of these workers are concerned that they will lose their jobs if they complain about unfair treatment.

In 2010, the Fair Wage Office will continue to focus on proactive investigations through compliance reviews of firms doing business with the City, as well as promotion and education of the Policy. The 2010 target is to conduct between seventy (70) to eighty (80) compliance investigations given existing resources within the Fair Wage Office. The Fair Wage Office will focus attention on those areas that are the most vulnerable to worker exploitation and abuse. Areas of high risk continue to include labour activity in the construction industry, cleaning services, tree/forestry services, security guard field

and the moving industry. A key goal for the Fair Wage Office is to raise awareness in the immigrant community about filing complaints against employers who do not pay the Fair Wage Rate in accordance with the City of Toronto's wage schedules. Many of these workers are intimidated and fear losing their jobs. As a result they are employed in low-wage industries which will be targeted for increased compliance.

Establishing Fair Wage rates and schedules are intended to minimize potential conflict between organized and unorganized labour in the tendering and awarding of City contracts. The 2003/2004 Fair Wage schedules will be reviewed and reported as required by the Manager, Fair Wage Office every three years.

CONCLUSION

In 2009, the Fair Wage Office conducted one hundred and forty one (141) site visits, and will continue to make this a priority to enforce and increase the visibility of the Fair Wage Policy. In addition, the Fair Wage Office will compare the list of proposed or current contractors with the latest disqualification list to ensure ineligible contractors do not work on City contracts. Providing and distributing educational material in various languages, about the City's Fair Wage Policy to workers and contractors will continue to foster greater awareness.

The Fair Wage Office will also continue to work co-operatively with internal client groups, operating divisions and external industries to promote, educate and resolve fair wage and labour trade issues to meet policy objectives and related emerging critical issues throughout the year.

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SIGNATURE

ATTACHMENTS

Appendix A: Fair Wage Office – 2009 Non-Compliant Firms

APPENDIX A

Fair Wage Office – 2009 Non-Compliant Firms

Fair Wage Non-Compliant		Labour Trade Non-Compliant	
1	A1 Asphalt Contracting Maintenance	1	A-Plus General Contractors
2	A-Plus General Contractors	2	CIR General Contractor
3	Bomben Plumbing & Heating Ltd.	3	D & N Demolition & Construction Services Ltd.
4	Capital Piping	4	Dol Turf Restoration Ltd.
5	Carillion Canada Inc.	5	Frank Pelligrino General Contracting Ltd.
6	DiMonte Brothers Inc.	6	Giffels Corporation an Ingenium Froup Company
7	ET Construction Inc.	7	Goodbye Graffiti
8	Fowler	8	Joe Pace & Sons Contracting Inc.
9	Impact Cleaning Services	9	Mistyk Metals Inc.
10	JCJ Contracting	10	Rafat General Contractor Inc.
11	Keefe Brothers Carpet Ltd.	11	Superior Air Systems Ltd.
12	Labour Ready/Samson Management	12	Trans Canada Construction
13	Leo Landscaping & Snow Ltd.		
14	Lima's Garden & Construction Inc.		
15	Lincoln Contracting Ltd.		
16	Miller Waste		
17	Mistyk Metals Inc.		
18	North Faux & Painting		
19	Queensway Excavation & Landscaping Ltd.		
20	Quorum Electric		
21	Rafat General Contractor Inc.		
22	Roof Tile Management		
23	Stouffville Glass Inc.		
24	Tri-City Equipment		
25	White Place Painting & Decorating Ltd.		

Total number of investigations completed, refer to Fair Wage Office – 2009 Annual Report Table 1.